

Matter of St. Louis v Commissioner

2008 NY Slip Op 32526(U)

March 3, 2008

Supreme Court, Albany County

Docket Number: 0784507/2008

Judge: George B. Ceresia

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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In The Matter of PHILLIP ST. LOUIS, ROBERT GUNNEY
and JOHN WRIGHT,

Petitioners,

For A Judgment Pursuant to Article 78
of the Civil Practice Law and Rules.

-against-

COMMISSIONER, Department of
Correctional Services,

Respondents,

Supreme Court Albany County Article 78 Term
Hon. George B. Ceresia, Jr., Supreme Court Justice Presiding
RJI No. 01-07-ST8150 Index No. 7845-07

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DECISION/ORDER/JUDGMENT

George B. Ceresia, Jr., Justice

The three petitioners, inmates in the custody of the New York State Department of Correctional Services, have commenced the above-captioned CPLR Article 78 proceeding seeking review of adverse administrative determinations concerning grievances they filed with regard to computation of their respective eligibility dates for entry into the Comprehensive Alcoholic and Substance Abuse Treatment (“CASAT”) program. The issue distills down to whether supplemental merit time (described below) should be considered when determining the eligibility date for participation in the CASAT program. The petitioners argue that it should. The respondent maintains it should not, even though the respondent currently considers merit time in determining CASAT program eligibility.

With regard to petitioner St. Louis, said petitioner wrote a letter to corrections officials requesting a ruling that supplemental merit time be considered in determining his eligibility date for participation in the CASAT program. On March 28, 2006 he received a response from Mary Bailey, Senior Corrections Counselor at Coxsackie Correctional Facility. Counselor Bailey indicated that the merit time release date, not the supplemental merit time release date, determines eligibility to participate in the temporary release program. Between March 28, 2006 and May 29, 2007 petitioner St. Louis made various efforts to persuade correction officials that this determination was not correct. On May 29, 2007 he filed an institutional grievance at Eastern Correctional Facility, arguing that supplemental merit time should be considered in determining the temporary release eligibility date. On June 7, 2007

the Inmate Grievance Review Committee issued a divided decision, two members voting to sustain the grievance and one member voting to deny the grievance. On June 11, 2007 the Superintendent of Eastern Correctional Facility denied the grievance. Thereafter, on July 11, 2007, the Central Office Review Committee issued a decision upholding the Superintendent's determination.

With regard to petitioner Gunney, during the summer of 2005 said petitioner wrote a letter to Anthony Annucci, Deputy Commissioner and Counselor for the Department of Correction Services, inquiring whether his temporary release eligibility date would be calculated based upon his supplemental merit date. In a letter dated July 28, 2005 Debra Joy, Director of the Temporary Release Program, responded by indicating that the merit eligibility date is used to determine eligibility for temporary release, not the supplemental merit eligibility date. The petitioner filed an institutional grievance on May 25, 2007. The Inmate Grievance Review Committee deadlocked, with two members voting to sustain the grievance and one member voting to deny the grievance. The Superintendent denied the grievance on June 6, 2007. On July 11, 2007 the Central Office Review Committee upheld the decision of the Superintendent.

In June of 2007 petitioner Wright wrote a letter to the Temporary Release Review Committee to ask if he would be eligible to apply for CASAT. The petitioner received a reply dated June 13, 2007 in which Temporary Release Reviewer Barbara E. King indicated that CASAT eligibility is based on the merit time date not the supplemental merit time date.

On July 12, 2007 the Inmate Grievance Review Committee deadlocked on a vote with regard to whether to uphold the grievance. The Superintendent denied the grievance on July 17, 2007. The Central Office Review Committee upheld the Superintendent's determination on August 15, 2007.

For purposes of determining eligibility for participation in a temporary release program, the term "eligible inmate" means "a person confined in an institution who is eligible for release on parole or who will become eligible for release on parole or conditional release within two years." (Correction Law § 851 [2]). Correction Law § 2 (18) defines an alcohol and substance abuse treatment correctional annex as "[a] medium security correctional facility consisting of one or more residential dormitories which provide intensive alcohol and substance abuse treatment services to inmates who: (i) are otherwise eligible for temporary release. . . and are within six months of being an eligible inmate as that term is defined in subdivision two of section eight hundred fifty-one of this chapter. . .". Thus, while an inmate becomes eligible for temporary release when he is within twenty four months of parole release or conditional release, he or she becomes eligible for participation in the CASAT program when the inmate is within thirty months of his or her parole or conditional release date.

Merit time, governed by the provisions of Correction Law Article 24 (§ 800 et seq.), has been in existence since 1997, and as relevant here, provides for a one sixth reduction in an inmate's minimum term of imprisonment (see Correction Law § 803 [1] [d]). The

respondent acknowledges that it has adopted a formal policy that merit time be considered when assessing an inmate's eligibility for participation in a temporary release program, including CASAT.

An additional one sixth reduction of an inmate's minimum term (commonly referred to as supplemental merit time) was established in 2004. § 30 (1) of L 2004, ch 738 of the Laws of New York (un-codified) recites, in relevant part, as follows:

“Notwithstanding any contrary provision of law, any person convicted of a felony defined in article 220 or 221 of the penal law. . . which was committed prior to the effective date of this section, and sentenced thereon to an indeterminate term of imprisonment pursuant to provisions of the law in effect prior to the effective date of this section and who meets the eligibility requirements of paragraph (d) of subdivision 1 of section 803 of the correction law as it existed on the effective date of this section, may receive an additional merit time allowance not to exceed one-sixth of the minimum term or period imposed by the court provided the inmate either: (i) successfully participates or has participated in two or more of the four program objectives set forth in paragraph (d) of subdivision 1 of section 803 of the correction law, or (ii) successfully participates in one of the program objectives set forth in paragraph (d) of subdivision 1 of section 803 of the correction law and successfully maintains employment while in a work release program for a period of not less than three months.”

Of great significance here, Correction Law § 851 (2-b) recites as follows:

“When calculating in advance the date on which a person is or will be eligible for release on parole or conditional release, for purposes of determining eligibility for temporary release or for placement at an alcohol and substance abuse treatment correctional annex, *the commissioner shall consider and include credit for all potential credits and reductions including but not limited to merit time and good behavior allowances.* Nothing in

this subdivision shall be interpreted as precluding the consideration and inclusion of credit for all potential credits and reductions including, but not limited to, merit time and good behavior allowances when calculating in advance for any other purpose the date on which a person is or will be eligible for release on parole or conditional release.” (Correction Law § 851 [2-b], emphasis supplied)

The respondent supports its argument that supplemental merit time should not be considered in determining the eligibility date for the CASAT program through submission of a memorandum dated February 24, 2005 of Anne Marie McGrath, Chief of Applications to Debra Joy, Director of Temporary Release. The memorandum recites, in part, as follows:

“One of the amendments to the Rockefeller Drug Laws that was included as part of the Drug Law Sentencing Reform Act of 2004 was a change that was made to the eligibility criteria for when drug offenders are able to enter the Comprehensive Alcohol and Substance Abuse Treatment (CASAT) Program. Under this change inmates who are serving sentences for drug offenses only, that is, offenses defined either in Article 220 or 221 of the Penal Law, are now eligible to enter CASAT when they are within thirty months of their merit time date. Please note that the measuring date for this purpose is the conventional merit date, not the supplemental merit time date.”

By virtue of the foregoing, the respondent advances the argument that it has adopted a policy of not considering supplemental merit time in connection with determining CASAT eligibility.

In the Court’s view, the starting point for consideration of the instant matter is with an examination of the relevant provisions of the Correction law. It is well settled that in attempting to construe a statute the Court should attempt to effectuate the intent of the

Legislature (see State of New York v Patricia II., 6 NY3d 160, 162 [2006]). Ordinarily, the plain language of the statute is dispositive (see Matter of Polan v State of New York Insurance Department, 3 NY3d 54, 58 [2004]; Matter of Excellus Health Plan, Inc. v Serio, 2 NY3d 166, 171 [2004]). “If the terms are clear and unambiguous, “the court should construe it so as to give effect to the plain meaning of the words used”” (Orens v Novello, 99 NY2d 180, 185 [2002], quoting Auerbach v Board of Educ., 86 NY2d 198, 204 [1995] quoting Patrolmen's Benevolent Assn. v City of New York, 41 NY2d 205, 208 [1976]). “[A]n agency's interpretation of the statutes it administers must be upheld absent demonstrated irrationality or unreasonableness,’ but where ‘the question is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, there is little basis to rely on any special competence or expertise of the administrative agency’” (Lorillard Tobacco Company v Roth, 99 NY2d 316, 322 [2003] quoting Seittelman v Sabol, 91 NY2d 618, 625, 1998]).

In this instance, there is nothing in the submissions of the respondent, including the memorandum of the Chief McGrath (supra), which provides facts to support a claim that the respondent’s determination is predicated upon its special expertise in the field of correctional services. In this respect, the Court is of the view that this is a matter of pure statutory construction, and that therefore the respondent’s interpretation of the relevant portions of the Correction Law is not entitled to deference (see Matter of Polan v State of New York Insurance Department, 2 NY3d 54, 58 [2004]; In the Matter of KSLM-Columbus

Apartments, Inc., v New York State Division of Housing and Community Renewal, 5 NY3d 303, 312 [2005]; Matter of Angello v Labor Ready, Inc., 7 NY3d 579, 583 [2006]). Moreover, the McGrath memorandum (supra) is bereft of any reasoning or facts to support Chief McGrath's conclusion that in carrying out the provisions of Correction Law § 851 (2-b), supplemental merit time should not be considered in determining eligibility for the CASAT program. In addition, none of the grievance determinations at issue in the instant proceeding (or other submissions) provides an explanation with regard to the distinction between merit time and supplemental merit time in connection with the computation of CASAT eligibility. In this respect, the respondent has failed to articulate a distinction between the two forms of merit time in computing temporary release eligibility under Corrections Law § 851 (2-b).

Correction Law § 851 (2-b) was adopted in 2004 (see L 2004 c 738 § 3). As noted the provision for the award of supplemental merit time was adopted as a part of the same legislation (see L 2004 C 738 § 30 [1]). The Legislature must be deemed to have been conscious of both portions of the legislative enactment when it directed the Commissioner to "consider and include credit for all potential credits and reductions including but not limited to merit time and good behavior allowances" in "calculating the date on which a person is or will be eligible for release on parole or conditional release, for purposes of determining eligibility for temporary release or for placement at an alcohol and substance abuse treatment correctional annex . . ." (see Correction Law § 851 [2-b], supra).

The Court finds on the instant record that the respondent has failed to adequately demonstrate a distinction between merit time and supplemental merit time in determining eligibility for participation in the CASAT program. Phrased differently, the respondent failed to demonstrate why supplemental merit time should not be included as a part of the “potential credits and reduction including but not limited to merit time and good behavior allowances” set forth in Correction Law § 851 (2-b).

The Court determines that it must give effect to the plain meaning of the language of Correction Law § 851 (2-b) (see State of New York v Patricia II, 6 NY3d 160, supra; Matter of Polan v State of New York Insurance Department, 3 NY3d 54, supra; Matter of Excellus Health Plan, Inc. v Serio, 2 NY3d 166, supra). Under the wording of Correction Law § 851 (2-b), all potential merit time must be considered in determining eligibility for temporary release. This, in the Court’s view, includes supplemental merit time. The Court finds that the grievance determinations at issue here were in violation of lawful procedure, affected by an error of law, irrational, arbitrary and capricious, and an abuse of discretion. The Court concludes that the petition must be granted, the determinations vacated, and the matters remanded to the respondent to re-calculate petitioners’ eligibility for admission to the CASAT program, taking into consideration petitioners’ supplemental merit time.¹

¹The Court must further point out that it is mindful of recent decisional law with regard to eligibility for re-sentencing under the 2005 Drug Law Reform Act (L 2005, ch. 643), which involves interpretation of the term “eligible inmate” under Correction Law § 851 (2) and the requirements set forth in Correction Law § 803 (1) (d). In People v Paniagua, (45 AD3d 98 [1st Dept., 2007], lv to app denied 9 NY3d 992]), the First Department Appellate Division held that an inmate must satisfy all of the requirements of Correction Law § 803 (1) (d) before the inmate

Accordingly it is

ORDERED and ADJUDGED, that the petition be and hereby is granted; and it is further

ORDERED and ADJUDGED, that the grievance determinations be and hereby are vacated and the respective grievances granted to the limited extent that the respondent is directed to consider supplemental merit time credit in determining petitioners' respective eligibility dates for participation in the CASAT program under Correction Law § 851 (2-b); and it is further

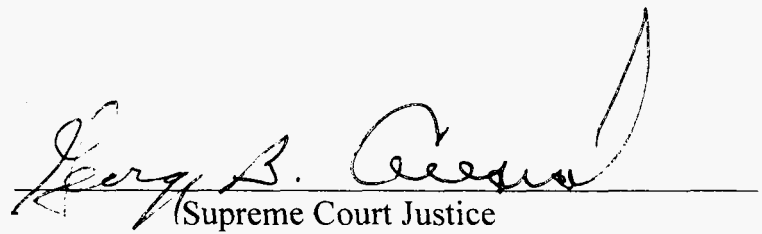
ORDERED and ADJUDGED, that the matters be and hereby are remanded to the respondent to re-calculate petitioners' eligibility for admission to the CASAT program, in keeping with this decision.

This shall constitute the decision, order and judgment of the Court. All papers are returned to the attorney for the petitioners who is directed to enter this Decision/Order/Judgment without notice and to serve petitioner with a copy of this Decision/Order with notice of entry.

would be deemed eligible for re-sentencing under the 2005 Drug Law Reform Act (see People v Paniagua, supra, cited with approval in People v Williams, ___ AD3d ___ [3rd Dept., February 14, 2008]). Notably, the respondent in this proceeding has not argued that the petitioners are ineligible for an award of supplemental merit time under either L 2004, ch 738 § 30 (1) and/or Correction Law § 803 (1) (d). Thus, that issue is not before the Court, and the Court makes no determination here with regard to whether any of the petitioners satisfy the requirements of L 2004, ch 738 § 30 (1) and/or Correction Law § 803 (1) (d) with regard to their qualification for supplemental merit time credit.

ENTER

Dated: March 3, 2008
Troy, New York



Supreme Court Justice
George B. Ceresia, Jr.

Papers Considered:

1. Notice of Petition dated September 24, 2007, Petition, Supporting Papers and Exhibits
1. Respondent's Answer dated October 25, 2007
2. Affirmation of Christina L. Roberts-Ryba, Esq., dated October 26, 2007 and Exhibits
3. Reply Affirmation dated October 31, 2007 and Exhibit